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IN THE

# SUPREME COURT OF THE UNITED STATES

April Term, 1977

## No. 76-352

**E. C. CHAPPELLE, JR.,**

**Appellant,**

***versus***

**THE GREATER BATON ROUGE AIRPORT DISTRICT, ET AL,**

**Appellees.**

**On Appeal from the Supreme Court of the State of Louisiana**

## BRIEF FOR THE APPELLEES

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## BRIEF FOR THE APPELLEES

## ARGUMENT

I. DOES THE UNITED STATES SUPREME COURT DECISION STYLED *TURNER V. FOUCHE*, 396 U.S. 346, 90 S.CT. 532 (1970) MANDATE THAT LOUISIANA ACT 151 OF 1969 BE STRUCK DOWN AS BEING VIOLATIVE

OF THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION?

Though citing several cases whose facts are clearly inapposite to the case at bar, it is clear that appellant in the instant case strongly relies upon the case of *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532 (1970). Appellant argues that the decision in *Turner*, supra, mandates relief for him in the instant case with a different factual setting. Such is not the case. To apply the rule of the *Turner* case, supra, to the instant case would be an illogical and uncalled for extension of the concept of equal protection.

The rule of the *Turner* case, supra, can be properly understood only in relation to the facts thereof. This case involved a Georgia statutory scheme for the appointment of members to a board of education. These board members were appointed by a grand jury. It is obvious from even a cursory reading of the *Turner* case, supra, that the real issue therein involved was a flagrant abuse of the system which systematically excluded Negroes from membership, both of the grand jury and the board of education! See 90 S.Ct. 539-40.

Thus, the context of the *Turner* case, supra, was such that while various statutory requirements might have been used as vehicles of discrimination, the overall effect with which the court was concerned was an obvious invidious discrimination against members of the Negro race. Under these facts, a **free holder** requirement for board membership was struck down. That is, the requirement of ownership of **real property** was held to be violative of the Constitution in considering one for membership on the board of education.



It was pointed out in the decision in *Turner*, supra, that the discriminatory scheme in question was invalid even when measured by the traditional test for equal protection. It was stressed in the decision that 85% of the budget of the school board in question was from sources other than the real property tax. Thus, the ownership of real property bore no real relation to a valid state objective. Again, it is to be remembered that there was evidence in the *Turner* case, supra, of gross calculated discrimination against members of the Negro **race.**

However, this Honorable Court in rendering the decision in *Turner*, supra, was unwilling to announce an across-the-board rule that property requirements are to be viewed as invalid in all circumstances. The Court said:

> "Without excluding the possibility that other circumstances might present themselves in which a property qualification for office holding could survive constitutional scrutiny, we cannot say, on the record before us, that the present free holder requirement for membership on the county board of education amounts to anything more than invidious discrimination." 90 S.Ct. at 542.

With the above factual setting in mind, the facts of the instant case are to be sharply contrasted. There is not even a hint in the instant case that Louisiana Act 151 of the 1969 legislature is applied in such a way as to work an invidious discrimination against any minority. Instead, appellant argues that the mere existence of the property requirement in question (i.e. ownership of "property assessed") constitutes a scheme that is defective on its face when measured by standards of equal protection of the 14th Amendment of the United States Constitution. However, it is obvious that such

a decision cannot be made by this Honorable Court without a full understanding of both the requirement in question, and the "public office" which appellant seeks to have reinstated.

An examination of Act 151 of the 1969 Louisiana Legislature, which allowed the creation of the Greater Baton Rouge Airport District, reveals perhaps more clearly than appellant would desire the true nature of the Board of Commissioners to which appellant seeks reinstatement. Act 151 provides in part:

> ". . . . The governing authority of the Airport District . . . shall consist of the Mayor and Parish Council of the Parish of East Baton Rouge and shall be known and herein referred to as 'Authority,' and the officers of the Parish Council under the Plan of Government shall be the officers of the Authority . . ."

The creation of the Board of Commissioners of the Airport District is accomplished in said Act 151 as follows:

> ". . . there is hereby further created and established a 'Board of Commissioners' . . . composed of nine (9) members from East Baton Rouge Parish appointed by Authority, and with terms of office designated by Authority. Such appointees shall be qualified electors in and owning property assessed in East Baton Rouge Parish, and may be members of the City Council of the City of Baton Rouge or the Parish Council of the Parish of East Baton Rouge. The members of the Airport Commission of the Parish appointed and qualified as of the effective date of this act shall constitute the initial members of the Commission. The Authority shall appoint a director who shall also serve as secretary of the Commission . . . The Authority and Commission shall keep a record of their respective proceedings. Members of the Commission shall not receive any compensation except travel allowance incurred while attending upon the business of the District as approved by the Authority. **The Commission shall be responsible for recommending to Authority the selection of airport sites and facilities for the operation and administration of the same and shall have all powers to act as governing authority of the District as authorized hereunder and which are specifically delegated to it by action of Authority by an ordinance or resolution which may be supplemented and amended from time to time by Authority for such purpose, provided that Authority shall retain the power to suspend or rescind any action or proposed action of Commission . . .**" (Emphasis Added)



It is clear that the position to which appellant seeks reinstatement is an appointed and non-compensated position. Unlike the Board of Education in the *Turner* case, supra, the instant position involves no final authority for decision making, or the expenditure of public funds. The commissioners are appointed by the Parish Council of East Baton Rouge and act merely as an advisory body to the Authority of the District, which is the Parish Council itself. The Authority has final voice on all matters.

To apply the reasoning and rule of the *Turner* case, supra, to the instant factual situation is to fail to recognize the realities of the situation. The property requirement in question is not a restraint on the selective power of the general citizenry, but only on the possible unbridled, autonomous whim and caprice of the Parish Council. The Louisiana Legislature sought not to work any discrimination against a citizen's right to participate in the ultimate decision making process of a public body, but merely to insure that those individuals appointed by a political subdivision (the

Parish Council) have some nexus within the Parish in which the Airport District exists.

The decision in *Turner*, supra, was supported by citing the case of *Kramer v. Union Free School District Number 15*, 395 U.S. 621, 89 S.Ct. 1886. This case dealt with the right to vote. The court there discussed the dilution of a citizen's voice in public affairs, citing the fact that even where a school board is appointed by a mayor, the citizens have an equal, indirect voice in the election process by voting on the mayor. See 395 U.S. 627-629, 89 S.Ct. 1890.

The instant case simply does not involve the same issues of those raised in *Kramer* and *Turner*, supra. In fact, plaintiff cites no case in which the concept of equal protection is stretched (beyond recognition) to apply to facts such as the instant ones. The board to which appellant seeks reinstatement is an advisory body exercising only such functions as are delegated to it by the Parish Council. The right to hold an appointment such as that in question is more in the nature of a privilege than a right.

It is to be noted that it is not the wisdom of the "assessed property" requirement that is here called into question. It may well be possible that the Louisiana Legislature could have chosen other requirements which would better suit the objective of insuring proper attachment to and regard for the community in which the airport district was to be located. However, the same argument which appellant here makes would exist for any requirement for potential commissioners, whether it be residency, education, or one of the prohibited criteria such as wealth, race or religion. Again, the instant requirement operates no deprivation of fundamental rights



of a minority as was present in the *Turner* case, supra. Every qualified elector can cast votes for the Airport District Authority (i.e. the Parish Council). Once elected, however, it is totally within the discretion of the Parish Council as to whom to appoint in the advisory status of the Board of Commissioners. Or rather, it is within their discretion as long as the challenged requirements are met. The restraint is on the Parish Council, **not** on the citizenry of East Baton Rouge Parish.

It is submitted that the requirements in question in the instant case do not in any respect work a deprivation of the rights of individuals and that the rule of the *Turner* case, supra, is inapplicable and should not be applied to the instant factual setting. The application of the *Turner* rule would serve only an unwarranted and uncalled for extension of the equal protection concept and result in a further unwarranted intrusion on the legislative authority of the several states by the federal government.

II. IS LOUISIANA ACT 151 OF 1969 VIOLATIVE OF APPELLANT'S EQUAL PROTECTION AND DUE PROCESS RIGHTS PROVIDED IN THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION?

Appellant contends that whether or not the decision in the *Turner* case, supra, mandates relief, the requirement that appellant own "property assessed" in East Baton Rouge Parish is unconstitutional in that it denies him equal protection of the law and due process of law. Any law which discriminates between citizens must be judged according to the right involved and the basis for the discrimination. If the right involved is a fundamental right, then the government must show that there is a "compelling state interest" for the dis-

crimination. If the right involved is not a fundamental right, the discrimination is to be judged by the traditional standards of equal protection.

Prior decisions of this Honorable Court say that among the fundamental rights are marriage (*Loving v. Virginia*, 88 U.S. 1), procreation (*Skinner v. Oklahoma*, 316 U.S. 535), contraception (*Eisenstadt v. Baird*, 405 U.S. 428), the right to vote (*Dunn v. Blumstein*, 405 U.S. 330), the right to have one's vote equally weighed with others (*Reynolds v. Simms*, 377 U.S. 533), the right to travel interstate (*Shapiro v. Thompson*, 394 U.S. 619) and First Amendment rights (*Police Dept. of City of Chicago v. Mosely*, 408 U.S. 92).

If there is no prior authority for holding a given right to be fundamental, the inquiry must be whether or not the right is based on basic values which underlie our society. It is submitted that there can be no rational way in which the right to hold an appointed, non-compensated, advisory position can be held to be a fundamental right. A position, the appointment and removal from which rests within the total discretion of an appointing authority, simply cannot be rationally said to be a fundamental right. More will be said about this later.

Traditional standards of equal protection have been long established. In *McGowan v. Maryland*, 336 U.S. 420, 81 S.Ct. 1101 (1961), this Honorable Court summarized the rule as follows:

> "The constitutional safeguard (equal protection) is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's ojective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." 81 S.Ct. at 1105.



In enacting Act 151 of 1969, the Louisiana legislature sought to insure that the members of the Commission would have a substantial interest in performing their duties effectively and conscientiously. Surely the legislature could have concluded reasonably that property owners of East Baton Rouge would have that interest. To effectuate this objective the legislature chose as its criterion for appointment to the Commission, the ownership of "property assessed in East Baton Rouge Parish." The fact that the determination of property ownership could have been made otherwise than "assessment" in no way militates against the validity of the choice made. In the achievement of a valid legislative objective, there is no requirement under traditional equal protection standards that the legislature choose the best method available, but only that there be a rational basis for the means chosen. A statutory discrimination will not be set aside for violating equal protection if any state of facts may reasonably be conceived to justify it. See *Dandridge v. Williams*, 90 S.Ct. 1153, 397 U.S. 471 (1970).

Louisiana Revised Statutes 47:1956-1957 require every owner of property, **movable and immovable**, to submit to the Parish Assessor a list of that property for assessment purposes. The legislature could have chosen to utilize this requirement as a simple method of determining property ownership for purposes of eligibility for appointment to the Commission under Act 151 of 1969. Such a scheme is not irrational, unless this Court is willing to hold as a matter of law that requiring

someone to have a property interest in a community, before he can be involved in an advisory capacity to a governing body, is unconstitutional.

It is submitted that the legislative scheme employed under Act 151 of 1969 is prima facie constitutional. There has been no allegation that the assessment practices as applied in this case are unconstitutional, nor has there been any evidence adduced on this issue. The overriding constitutional considerations considered by this Honorable Court in *Turner*, supra, *Kramer*, supra, and the other cases cited by appellant are simply not present in the instant case. It is urged again that the situation now before this Honorable Court falls squarely within the realm of what must have been contemplated in writing the *Turner* decision where the court said:

> "Without excluding the possibility that other circumstances might present themselves in which a property qualification for office holding could survive constitutional scrutiny . . ." 90 S.Ct. at 542.

III. IS THE RIGHT TO HOLD AN APPOINTIVE OFFICE A "FUNDAMENTAL RIGHT" UNDER THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT OF THE UNITED STATS CONSTITUTION?

The issue as framed by appellant and stated above is actually somewhat misleading. It is conceivable that the right to hold an appointive office could, under certain circumstances, become a fundamental right. In the *Turner* case, supra, for example, a local board of education was appointed by a grand jury. This board doubtless had the final authoritative say-so in matters involving school expenditures, school policy, and school administration. All citizens, regardless of



race, sex, ethnic origin, wealth, etc., should have a choice in the decisions made by such board. The instant "Board of Commissioners of the Greater Baton Rouge Airport District" bears little more resemblance to the board of education in *Turner* than a flickering candle does to the noon-day sun.

As pointed out earlier, the Board of Commissioners to which appellant seeks reinstatement is an advisory board. The members of said board exercise only such functions as the governing authority (the Parish Council) chooses to delegate to them. The Authority always has the right to rescind or revoke any prior action taken by the commissioners. The Authority has the right to follow or not to follow the advice of the commissioners. It is difficult to conceive of how the right to hold such an advisory capacity appointment becomes a fundamental right under the equal protection clause.

An analogous situation might be if the Congress of the United States were to pass a law saying that any appointed Presidential Advisor must be a U. S. resident. It can be seen that a citizen of this country, though a non-resident, might be eminently qualified and every bit as loyal, capable and honest as any resident. Thus, the criterion established by Congress could not be said to be a perfect index of whether one would be qualified to serve as Presidential Advisor. Nevertheless, it is submitted that such requirement would be inherently justified and therefore constitutional. Why? Simply because the right to act as presidential advisor is not a fundamental right under the equal protection clause, any more than is the right to act as a member of the Board of Commissioners of the Greater Baton Rouge Airport District.

It is again urged that the requirement of ownership of

"assessed property" does not work an invidious discrimination against the citizens of East Baton Rouge Parish, but merely acts as a minimal guideline in bridling the otherwise unlimited authority of the Parish Council in selecting the members of the Board of Commissioners.

## CONCLUSION

In summation, it is urged that the right to hold the appointive office in question in the instant case is not a fundamental right. The requirement of ownership of "assessed property," while possibly not the best criterion available to the Louisiana legislature, cannot be said to "rest on grounds wholly irrelevant to the achievement of the state's objective." Accordingly, it is submitted that the equal protection and due process rights of appellant herein have not been in any way violated by the application of Louisiana Act 151 of 1969. Appellant's demands should be rejected and his claim dismissed at his costs.

## PROOF OF SERVICE

I, Joseph F. Keogh, Attorney for the Greater Baton Rouge Airport District, et al, Appellees herein, do hereby certify that on the_____day of March, 1977, I served a copy of the foregoing motion and brief, and its appendices on E. C. Chappelle, Jr., Appellant, by delivering the same to counsel of record, Mr. Herschel C. Adcock, 821 Main Street, Post Office Drawer 3037, Baton Rouge, Louisiana 70821.

Joseph F. Keogh, Parish Attorney



## APPENDIX A

1. Louisiana Act 151 of 1969 at Section 3 states:

"The Parish Council of the Parish of East Baton Rouge (hereinafter sometimes called 'Council') may create an Airport District composed of the whole of the Parish of East Baton Rouge, and such Airport District shall be a subdivision of the State within the meaning of Article 10, Section 10 and Article 14, Section 14 of the Louisiana Constitution and of the sections of the Revised Statutes relating to the paying of taxes, incurring of debt and the issuing of bonds. Before the creation of the District, the Council shall give notice of intention to create the Airport District which notice shall be ordered by resolution stating the intention to create such District, and the territory of which the District is to be composed. The notice shall embrace substantially all matters required to be in the resolution ordering the notice and shall set forth in addition the date, hour and place at which the Council will be in open session conduct a hearing and proceed to create the District. The notice of intention to create the District shall be published once a week, the first publication being not less than fifteen (15) days before the date fixed for the hearing in the official journal of the Parish. At the time and place designated in the notice, the Council shall hear all objections interposed to the proposed District and may recess the hearings from time to time. After disposing of all objections, the Council shall, if it determines to create the Airport District, adopt a resolution confirming the creation of the District and giving it a name entitled "Greater Baton Rouge Airport District." Notice of the formation of the Airport District shall be given by publication one time in the same newspaper published in the Parish in which the notice of intention to create the District was published. The governing authority of the Airport District subject to the provisions of Section 5 hereof, shall consist of the Mayor and Parish Council of the Parish of East Baton Rouge and shall

be known and herein referred to as 'Authority,' and the officers of the Parish Council under the Plan of Government shall be the officers of the Authority. An airport District created hereunder is a public corporation and has all powers of public corporations, including perpetual existence, the right and power to incur debt and contract obligations, to sue and be sued, to have a corporate seal and to perform in its corporate capacity and in its corporate name all actions necessary and proper for the purpose of financing, acquiring, constructing, maintaining and operating airports and airport facilities including both movable and immovable property. No bonds shall be issued by the Airport District authorized under this section until they are authorized by a vote in majority and amount of the property taxpayers qualified to vote under the Constitution and Laws of the State of said District, who vote at an election on such question. The Airport District created under this section may call a special election and submit to the qualified taxpaying voters of the Airport District the question of incurring debt and issuing negotiable bonds under this section. The election shall be ordered by resolution which shall state the purposes for which the debt is to be incurred, the amount of the debt, the number of years for which the bonds are to run and the maximum rate of interest. The method of incurring and refunding debt and issuing negotiable bonds under this section shall be the same as that prescribed in Chapter 4, Sub-Title 2 of Title 39 of the Louisiana Revised Statutes. The District shall have all powers generally vested in Airport District including, for example, the power authorized by R. S. 2:329, subject to the requirement necessary and provided. This section is full authority for the creation of the Airport District herein authorized without reference to any other part. No proceedings with respect to the creation of such Airport District are necessary except as required by this section. The District shall constitute an instrumentality and an agency of the State of Louisiana, exercising public and essential governmental functions, and the exercise



by the District of the powers conferred herein shall be deemed and held to be essential governmental functions of the State of Louisiana and of the Parish of East Baton Rouge. As the exercise of the powers granted hereby will be in all respects for the benefit of the people of the State and of the area for the increase of their commerce and prosperity, the District shall not be required to pay any taxes or assessments upon any property acquired or used by it under the provisions of this law, or upon the income therefrom, and any bonds issued hereunder and the income therefrom shall be exempt from taxation by the State of Louisiana and by any parish, municipality or political subdivision of the State. The District shall not be subject in any respect to the authority, control or supervision of any regulatory body of the State or any political subdivision thereof except as herein provided, but its books and records shall be subject to audit annually in the same manner as is provided in the Plan of Government for the Parish of East Baton Rouge and the City of Baton Rouge (hereinafter called 'Plan of Government') for the audit of all other departments and agencies of the Parish and City. Except as hereinafter provided, its employees shall be members of the classified service established by Chapter 9 of said Plan of Government, and its officers and employees shall be subject to the provisions of the Code of Ethics of the Parish of East Baton Rouge and the City of Baton Rouge, provided that the Rules of the classified service pertaining to employment of personnel by District for any facility owned or operated in 'Adjoining Parish' as defined in Section 5 hereof shall afford no preference to residents of East Baton Rouge Parish over residents of 'Adjoining Parish.' The domicile of the District shall be in the City of Baton Rouge, provided, however, that by appropriate action of its governing authority, said domicile may be relocated within the District. The Mayor-President of the Parish Council shall serve as the President and the presiding officer of the District. The Authority shall be governed by and act with regard to procedure pursuant to those pro-

visions of the Plan of Government applicable to the Parish Council of the Parish of East Baton Rouge, and may adopt such rules of procedure as may be consistent with said Plan of Government and reasonable and proper for its government. Subject to the provisions of Section 5 hereof, there is hereby further created and established a 'Board of Commissioners' (hereinafter called 'Commission') composed of nine (9) members from East Baton Rouge Parish appointed by Authority, and with terms of office designated by Authority. Such appointees shall be qualified electors in and owning property assessed in East Baton Rouge Parish and may be members of the City Council of the City of Baton Rouge or the Parish Council of the Parish of East Baton Rouge. The members of the Airport Commission of the Parish appointed and qualified as of the effective date of this act shall constitute the initial members of Commission. The Authority shall appoint a Director who shall also serve as Secretary of Commission. As soon as practicable after their appointment, the Commission shall meet at the domicile and elect from their number a Chairman, a Vice-Chairman, a Treasurer and such other officers as may be considered appropriate. The Treasurer of Commission may be selected by the Commission from among their members or may be otherwise selected by the Commission. The Director, Secretary and the Treasurer shall be unclassified. Their duties shall be defined and their salaries fixed by the Commission. The Commission shall adopt such rules and regulations as may be necessary for Commission's government. A majority of the Commission shall constitute a quorum for the transaction of business, but in no event, shall a resolution, ordinance or other action of the Commission become effective unless such action shall have been approved by not less than a majority of the entire membership. The Authority and Commission shall keep a record of their respective proceedings. Members of the Commission shall not receive any compensation except travel allowance incurred while attending upon the business of the District as approved



by Authority. The Commission shall be responsible for recommending to Authority the selection of airport sites and facilities for the operation and administration of same and shall have all powers to act as governing authority of District as authorized hereunder and which are specifically delegated to it by action of Authority by an ordinance or resolution which may be supplemented and amended from time to time by Authority for such purpose, provided that Authority shall retain the power to suspend or rescind any action or proposed action of Commission. Subject to the provisions of the Plan of Government, Authority (or Commission if authorized by Authority) may employ such engineers, accountants, construction and financial advisors, attorneys, superintendents and other employees and agents as may be necessary and it shall designate one newspaper in the Parish of East Baton Rouge of general circulation as the official journal of the District. District is fully authorized to cooperate financially and otherwise with the Government of the United States, the State of Louisiana, and with any political subdivisions, instrumentalities or agencies of said State and said Federal Government in carrying out any of the powers hereunder. The District shall have the power to sue and be sued in its own name, except that this shall not be construed as a waiver of governmental immunity otherwise applicable to the District, to own all facilities and all properties incidental and necessary to carry out all purposes of District and powers authorized hereunder, including real and personal, servitudes and rights-of-way (or any combination thereof); to acquire by expropriation, purchase, lease or otherwise said land and other property, to enter into contracts for the use of the facilities owned or operated by District or any portion thereof, with any person or corporation, public or private, with the United States, the State of Louisiana or any of their various agencies, or with any political subdivision or agency of said U. S. Government, the State or with any combination thereof, provided that no exclusive lease agreement for the business of furnish-

ing of fuels for aircraft shall be entered into, nor shall Authority conduct or engage in such business. Taxes as authorized by Article 10, Section 10 and Article 14, Section 14 of the Constitution of Louisiana levied by District shall be entitled to the benefit of the exemption and reimbursal authorized by R. S. 39:253 or any similar reimbursals as the law of Louisiana may hereafter be amended.